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C O N F I D E N T I A L SECTION 01 OF 03 MOSCOW 005311

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STATE FOR EUR/RUS KELLY AND PATTERSON

STATE FOR EEB/TRA BYERLY AND COLEMAN

AIR FORCE FOR DEB PLUNKETT

OSD FOR DANIEL ROH AND ANNE GEBHARDS

NSC FOR WARLICK AND MCKIBBEN

E.O. 12958: DECL: 11/07/2017

TAGS: ECON FAIR PREL RS

SUBJECT: RUSSIA: NO POSTPONEMENT OF NEW STATE FLIGHTS

PROCEDURES

REF: MOSCOW 4765

Classified By: Ambassador William J. Burns. Reasons: 1.4 (b, d).

Summary

¶1. (C) The GOR has decided to implement the pre-payment scheme for USG "state" flights despite previous indications from the MFA that last week's informal bilateral discussions might stave off the November 1 implementation of these new rules. Because U.S. policy is neither to pay nor charge for state flights, the Russian demand for pre-payment prior to processing the diplomatic clearance request may effectively curtail official USG flights to the Russian Federation.

¶2. (C) Post recommends that we propose to the GOR a senior-level meeting in Washington with a commensurately-led Russian delegation to explore the consequences of the pre-payment scheme on the U.S.-Russia bilateral relationship.

It is post's belief that the MFA must lead the Russian delegation since the Federal Air Navigation Authority (FANA) is a technical agency empowered by the GOR only to negotiate a USG payment regime, and is incapable of assessing the adverse impact its actions are having on the larger U.S.-Russia bilateral relationship (see Para 13). End Summary.

Cordial But Tense Dialogue

¶3. (C) A U.S. delegation including the U.S. Air Force, EUR/RUS, and Embassy ECON and DAO met with a Russian delegation led by the Federal Air Navigation Authority (FANA) Director for International Relations, Mikhail Parnev, November 1-2 in Moscow to resume consultations on State Flights. This 15-year-old dispute heated up upon USG receipt of a Russian diplomatic note September 23 (reftel) informing the U.S. that, unless payment was received in advance for USG official or "state" flights to or through Russian Federation airspace, the GOR would not provide the necessary diplomatic clearances. This would, in effect, deny USG official aircraft the right to fly over or land in Russia, unless an exemption was received or the flight was covered under some other treaty instrument, such as the Open Skies Treaty or START.

¶4. (SBU) Parnev presented the delegation with a somewhat revised version of an agreement previously rejected by the USG in January 2007. Like its predecessor, this new document is based solely on the premise that the U.S. would A) make good its "debt" for Air Traffic Control (ATC) services rendered to USG state flights by the Russian Federation since 1993 and B) commit to pay for navigation services to USG state flights to and over the Russian Federation in the future. The GOR proposal also requires payment for USG state flights utilizing airspace that is within the Russian Flight Information Region (FIR) but which is not Russian territory (e.g. over the high seas, international airspace).

¶5. (C) Parnev confirmed that the proposed terms apply even if the USG aircraft is flown without utilizing Russian ATC services (i.e. with "due regard" for the safety of civil aviation), as is the right of state aircraft. As an incentive, Parnev pointed out that payment would be forgiven for the years 1995-1999. (Comment: Parnev failed to mention that the GOR had previously told U.S. representatives that it could not locate records for those intervening years. End Comment.)

¶6. (C) The U.S. side promised to review and respond to the document once an official translation had been made, while stressing again that no agreement based solely on Russia's insistence that the U.S. pay for navigation services rendered to its state aircraft would be approved. Parnev refused to acknowledge the U.S. point that his stance could effectively curtail official USG travel to Moscow. The U.S. team offered to meet again once it had had sufficient time to incorporate U.S. points into the draft text and suggested that the fundamental disagreement - to pay or not to pay - be handled at a higher level. In response to the U.S. delegation's

MOSCOW 00005311 002 OF 003

request to delay imposition of the fees until such time as our negotiations had been concluded, Parnev promised to seek guidance from the MFA and FANA. He warned, however, that he was not hopeful permission would be granted absent a U.S. commitment to pay.

Unfortunate Result

¶7. (C) When ECON and RUS officers reconvened with Parnev and an MFA representative November 2 to finalize minutes of the November 1 session, Parnev claimed he was still awaiting a decision from higher authorities at FANA and MFA regarding postponement of the pre-payment regime. USG officials explored what a higher level discussion might look like, and stressed that the discussion would be a political one.

¶8. (C) Parnev, it soon became clear, viewed the chance for higher level discussions as his personal opportunity to present his bills (again) to higher-ranked USG officials for payment. In response, USG officials insisted that the MFA lead any political discussion, and made clear to the MFA how FANA's action would be received in the U.S., particularly after the U.S. team had arrived on such short notice (as requested by MFA and with the understanding that its arrival could forestall implementation of the prepayment regime). USG officials underscored that there could be genuine repercussions to the GOR's denial of flight clearances.

¶9. (C) On November 3, MFA North America Director Igor Neverov told the DCM that the U.S. initiative to send the team to Moscow to continue discussions on state flights had been a welcome step. However, the MFA had not been able to convince the rest of the Russian interagency community to postpone implementing the new pre-payment system, which was now in effect. That said, the GOR remained open to further negotiations.

Comment

¶10. (C) As long as FANA remains the lead negotiator in the talks to resolve the dispute on state flights, discussions will continue to focus on the debts and budgets of the air traffic controllers. FANA is interested in getting paid and its subsidiary organizations that carry out the actual work are funded solely from fees. Every agreement that FANA has presented, including the one received November 1, pre-supposes U.S. consent to a paying relationship, despite the fact that Russian law allows exemption from aviation fees by international agreement. FANA is not responsible for, nor is it authorized to, weigh the impact any curtailment in USG flights would have on the overall US-Russia relationship.

¶11. (C) The impact of the Russian decision to impose pre-payment has now become unavoidably political. Unless the USG changes its policy or the GOR walks back the new procedures, the GOR could effectively deny clearance to U.S. official aircraft. While exceptions might presumably be negotiated on a case-by-case basis (for example, on flights with Cabinet-level officials and above), it seems clear that the GOR is unlikely to approve any where near the current number and variety of flights.

¶12. (C) The USG has been reluctant to allow state flights to be treated differently depending on the rank of passengers, as this undermines the U.S. position that all state aircraft are exempt, and because there may be security risks associated with the disclosure of the names and ranks of passengers overflying (not landing in) foreign territory. Negotiating individual exceptions would be complicated (at best) and could well disrupt travel planning for high-level delegations and CODELs. End comment.

Suggested Way Forward

¶13. (C) To get past the deadlock in which we find ourselves now that the Russians have upped the ante, the U.S. delegation and Embassy Moscow concluded that discussion with

MOSCOW 00005311 003 OF 003

the GOR must first address the fundamental "pay or don't pay" disagreement before any meaningful technical work can proceed. We further concluded that this would be effective only at a political level on both sides and with an agency other than FANA in the lead. We propose that the USG invite a Russian delegation led by the MFA to come to Washington in early December. The invitation should request that the GOR team be led at an appropriate level and have the composition to address the political impact of the dispute. The U.S. side should have a similar composition and level of leadership. The goal of the meeting would be to assess the impact of any curtailment of flights on the broader U.S.-Russia relationship and to explore possible ways forward.

BURNS